

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENDA HAIRE JOHNSON)	
Claimant)	
)	
VS.)	
)	
HOLTON COUNTRY MART)	
Respondent)	Docket No. 268,249
)	
AND)	
)	
BENCHMARK INSURANCE CO.)	
Insurance Carrier)	

BRENDA HAIRE JOHNSON)	
Claimant)	
)	
VS.)	
)	
FAST TRAX INC.)	
Respondent)	Docket No. 268,250
)	
AND)	
)	
NATIONAL FARMERS UNION PROPERTY)	
Insurance Carrier)	

ORDER

Holton Country Mart and Benchmark Insurance Company request review of a preliminary Order entered by Administrative Law Judge Bryce D. Benedict on October 25, 2001.

ISSUES

The claims for injury by accident alleged in Docket Nos. 268,249 and 268,250 were consolidated for hearing and trial. Judge Benedict ordered Holton Country Mart, the

respondent in Docket No. 268,249, to designate an authorized physician to provide treatment. The request for payment of medical bills was deferred.

Respondent Holton Country Mart and its insurance carrier, Benchmark Insurance Company, contend the Administrative Law Judge exceeded his jurisdiction because claimant sought payment of past due medical bills and did not seek future medical treatment. In addition, it is argued the Administrative Law Judge erred in not finding the claimant suffered a subsequent intervening accident and/or aggravation on May 20, 2000, and following a series of accidents with claimant's subsequent employer, Fast Trax, Inc., in May 2001. That subsequent injury or aggravation is the subject of Docket No. 268,250.

Respondent Fast Trax, Inc. and its insurance carrier, National Farmers Union Property, contend the claimant did not suffer injury while employed with Fast Trax, Inc. and her treatment was caused by and is a natural and probable consequence of claimant's admitted accidental injury that occurred while employed by Holton Country Mart. Respondent Fast Trax, Inc., contends the Administrative Law Judge's decision should be affirmed.

Claimant contends that the medical bills were incurred and the need for medical treatment are a natural and probable consequence of the injury she suffered while working for Holton Country Mart. Claimant notes she filed a second claim against Fast Trax, Inc., out of an abundance of caution. Claimant contends the Administrative Law Judge's decision should be affirmed.

The issue for Board review, therefore, is whether claimant's need for medical treatment is the result of the admitted accidental injury that occurred on May 15, 1999 while claimant was employed with Holton Country Mart.

FINDINGS OF FACT

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

1. Claimant was employed as a baker at Holton Country Mart on May 15, 1999. On that date she was injured when she tripped and fell backwards onto a dolly. She injured her left thigh and leg.

2. The accident occurred on Saturday and the following day claimant's leg was severely swollen. Claimant received authorized treatment on Monday. An ultrasound revealed a blood clot in her leg. Claimant was hospitalized for a week and treated with intravenous blood thinners and elevation of her leg.

3. After the claimant was dismissed from the hospital she was home for three days but the pain in her leg became severe and she was again hospitalized. An ultrasound again indicated a blood clot which was moving. A catheter was inserted in the back of claimant's knee to administer drugs. The blood clot had damaged the iliac vein in claimant's abdomen and a stent was inserted to keep the vein open.

4. The claimant was prescribed Coumadin for three months. The claimant was ultimately released from treatment August 19, 1999, and was instructed to watch for pain or swelling and to return for additional treatment if either occurred. Claimant was also placed on temporary restrictions to sit down every 2 hours for approximately 10 or 15 minutes and to avoid heavy lifting.

5. At approximately the same time, the claimant had obtained employment with Harrah's where she was employed through December 1999. The nature of her job duties with this employer were not detailed.

6. On May 20, 2000, while on a four or five hour car trip in Colorado, the claimant's leg began to swell and she sought emergency room treatment. Claimant testified she was advised at that time that scar tissue from her blood clot caused her circulation to be poor which would probably be a lifetime problem. Claimant further testified that she was told the swelling was caused because her circulation was bad and sitting down for so long caused the swelling.

7. Claimant began employment with Fast Trax in May of 2001. Her hours were from 9:30 p.m. to 6:00 a.m. working just weekends. On July 6, 2001, claimant sought treatment with symptoms of swelling in her leg. She noted that after working weekends she would experience swelling in her leg. The doctor noted claimant's history of deep venous thrombosis, prescribed medication and provided a note for her employer which recommended she sit with her feet elevated frequently throughout her shift.

8. Claimant testified that if she stood washing dishes for 30 minutes she would develop slight swelling in her leg. She noted that 30 minutes is her limit and that prior to her employment at Fast Trax, she would occasionally have swelling if she stood on her feet too long. Claimant testified that her symptoms have returned to the level they were prior to her employment at Fast Trax.

CONCLUSIONS OF LAW

An Administrative Law Judge's preliminary award under K.S.A. 1998 Supp. 44-534a is not subject to review by the Board unless it is alleged that the Administrative Law Judge

exceeded his or her jurisdiction in granting the preliminary hearing benefits.¹ "A finding with regard to a disputed issue of whether the employee suffered an accidental injury, [and] whether the injury arose out of and in the course of the employee's employment . . . shall be considered jurisdictional, and subject to review by the board."² Whether claimant suffered a subsequent intervening injury gives rise to an issue of whether claimant's current condition arose out of and in the course of his prior employment with respondent. This issue is jurisdictional and may be reviewed by the Board on an appeal from a preliminary hearing order.

The Workers Compensation Act places the burden of proof upon claimant to establish his or her right to an award of compensation and to prove the conditions on which that right depends.³ "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."⁴ The Act is to be liberally construed to bring employers and employees within the provisions of the Act but those provisions are to be applied impartially to both.⁵

When the primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.⁶ It is not compensable, however, where the worsening or new injury would have occurred even absent the primary injury or where it is shown to have been produced by an independent intervening cause.⁷ The Board finds that claimant's work at Fast Trax following her employment by Holton Country Mart, was a temporary aggravation and, therefore was not the cause of claimant's condition at the time of the preliminary hearing. Claimant's current condition, which has subsided to a level that existed before her employment with Fast Trax, therefore, is compensable as a direct and natural consequence of the original May 15, 1999 injury.

¹ K.S.A. 1998 Supp. 44-551(b)(2)(A).

² K.S.A. 1998 Supp. 44-534a(a)(2).

³ K.S.A. 1998 Supp. 44-501(a); see also Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

⁴ K.S.A. 1998 Supp. 44-508(g). See also In re Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

⁵ K.S.A. 1998 Supp. 44-501(g).

⁶ Jackson v. Stevens Well Service, 208 Kan. 637, 643, 493 P.2d 264 (1972).

⁷ Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997); Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973). See also Bradford v. Boeing Military Airplanes, 22 Kan. App. 2d 868, 924 P.2d 1263, *rev. denied* 261 Kan. 1082 (1996).

Fast Trax should not be held liable for claimant's medical treatment before or after her employment with Fast Trax, when claimant said her condition returned to its preemployment level. But, during the time claimant was working at Fast Trax, Fast Trax and its insurance carrier could be responsible for medical treatment for the temporary aggravation that occurred as a result of claimant's employment with Fast Trax. Nevertheless, since the Administrative Law Judge's Order in this case is prospective and deals only with medical treatment from the date of the preliminary hearing Order, the assessment against Holton Country Mart and its insurance carrier was proper and should be affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Bryce D. Benedict dated October 25, 2001, should be and in hereby, affirmed.

IT IS SO ORDERED.

Dated this _____ day of January 2002.

BOARD MEMBER

c: Cynthia Patton, Attorney for Claimant
D'Ambra Howard, Attorney for Respondent, Holton Country Mart
Joan Klosterman, Attorney for Respondent, Fast Trax Inc.
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Workers Compensation Director